REMARKS

Applicants have cancelled claims 1-74 and added new claims 75-101. No new matter has been added by way of these amendments. These new claims are believed to be distinguishable over the cited references and in condition for allowance. A notice to this effect is respectfully requested. In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

The Office has rejected claims 1-46 under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,704,045 to King et al (King) in view of US Patent Application Publication No. 2002/0035488 to Aquila et al (Aquila) and further in view of US Patent No. 6,604,080 to Kern (Kern). The Office has acknowledged King and Aquila do not disclose determining when an assessment is needed based on a size of the insurance insolvency and an amount in the state fund, but asserts it would have been obvious to one of ordinary skill in the art at the time of the invention to have include Kern which the Office asserts discloses this determination at col. 19, line 55 to col. 20, line 11.

King, Aquila, and Kern, alone or in combination, do not disclose or suggest, new claims 75-101. By way of example with respect to new independent claims 75, 84, and 93, (as discussed in greater detail in Applicants' prior response and as acknowledged by the Office above) neither King nor Aquila have anything to do with determining when an assessment of at least one insolvency fund associated with a plurality of insurers is needed based on one or more triggers. However, contrary to the Office's assertions col. 19, line 55 to col. 20, line 11 in Kern does not teach or suggest determining when an assessment of at least one insolvency fund associated with a plurality of insurers is needed based on one or more triggers. For the Office's convenience col. 19, line 55 to col. 20, line 11 in Kern is set forth below:

> Further, with regard to the understanding that the employer is in all plans the ultimate responsible party to provide workers' compensation benefits to injured employees in the "compulsory states," the severing of Part A and Part B to a standard workers' compensation policy gives the least exposure to the employer. Under state law, the insurance company is liable to the injured employee. If the insurance company should fail, then the state guarantee fund becomes liable. Then, if the guarantee fund should not pay, the employer must do so. Contrast this with group self-insurance or assessable mutuals, where first the premium pool pays, and, if it becomes insolvent, then all member employers are jointly and severally liable or pro

> rata liable for all other members' workers' compensation obligation to its injured employees (in those majority of states that do not have guarantee funds or group insurance). In individual self-insurance, the individual employer already pays first dollar up to a retention limit, then the excess insurance begins to pay. In ERISA plans, depending on the structure of the plan, and in Twenty-Four Hour Coverage plans, depending on the states various laws, it is difficult to legally determine if guaranty funds would have to legally be obligated to pay in the event of insolvency of participating insurance carriers. (Emphasis Added)

Accordingly, this passage merely discloses the order of who is responsible for payment if a prior entity should fail, i.e. the insurance company then the state guarantee fund and then the employer. However, there simply is no disclosure or suggestion in Kern of any determination when an assessment of at least one insolvency fund associated with a plurality of insurers is needed, let alone performance of the assessment, allocation of a member assessment amount to each of the plurality of insurers based on the performed assessment, or notification of the allocated member assessment amount to each of the plurality of insurers. Accordingly, in view of the forgoing amendments and remarks, the Office is respectfully requested to reconsider and withdraw the outstanding rejections.

In view of all of the foregoing, Applicants submit that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

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